37

No. 93-518

In The

# Supreme Court of the United States

October Term, 1993

FLORENCE DOLAN,

*Petitioner,*

v.

CITY OF TIGARD,

*Respondent.*

On Writ Of Certiorari
To The Oregon Supreme Court

## PETITIONER'S REPLY TO BRIEF FOR RESPONDENT

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23 pp

# TABLE OF CONTENTS

Page

ARGUMENT ..... 1

The facts of the case at bar, as shown in the record, establish Mrs. Dolan was singled out by the city in a manner that effects a Taking ..... 2

Mrs. Dolan's proposed new store will not unduly burden the city ..... 3

Payment of impact fees ..... 3

Impacts of a "major modification" ..... 4

Outright prohibition of the new store ..... 5

The city's decision does not relieve Mrs. Dolan of the burdens associated with dedicating 10% of her land to the city ..... 7

Dedication of a fee interest ..... 7

Construction of the pathway ..... 8

Relief from other city-imposed burdens ..... 9

The city's decision forcing Mrs. Dolan to dedicate 10% of her land to the city does not afford her with benefits ..... 10

Floodway improvements ..... 10

Pedestrian/bicycle pathway ..... 11

This Court's decision in *Nollan* places the burden of showing the "essential nexus" on the city ..... 12

Heightened scrutiny of the nexus between development impacts and dedication conditions imposed by the city is appropriate because its decision is being challenged on an as-applied basis, and thus is not entitled to the same deference accorded legislative and administrative decisions 15

CONCLUSION ..... 18

TABLE OF AUTHORITIES

Page

CASES

*Brown v. Maryland*, 25 U.S (12 Wheat.) 419 (1827) .... 15

*Fasano v. Washington Co. Comm.*, 264 Or. 574, 507 P.2d 23 (1973) .... 16

*Lucas v. South Carolina Coastal Council*, 505 U.S. ___, 120 L. Ed. 2d 798, 112 S. Ct. 2886 (1992) .... 6

*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) .... *passim*

*Norwood v. Baker*, 172 U.S. 269 (1898) .... 12

*Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978) .... 9

*Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922) .... 2

*United States v. Good*, 62 U.S.L.W. 4013 (U.S. Dec. 13, 1993) .... 16

RULES AND REGULATIONS

Tigard Community Development Code:

CDC § 18.120.070.B .... 5

## ARGUMENT

The City of Tigard, in its brief for respondent in No. 93-518, and the United States, in its *amicus curiae* brief in support of the city, contend the land use decision of the city afforded Mrs. Dolan sufficient benefits, and mitigated the burdens that were imposed on her, by the dedications that were imposed on her, to be sufficient to show she was not being "singled out in a manner so as to effect a compensable taking." Brief for United States at 27.

The city and the United States also contend the burden was on Mrs. Dolan, and not on the city, to show the requisite "nexus" between the "adverse" impacts of Mrs. Dolan's new store, and the requirement she dedicate 7000 square feet of her private, real property to the city. Both the city and the United States assert this Court's opinion in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), does not allocate that burden to the city.

The city and *amicus* United States also argue this Court should give the city's dedication decision the same deference it accords the review of the constitutional validity of legislative and administrative decisions of local governments. Thus, they contend, heightened scrutiny of the nexus between development impacts and dedication conditions imposed by government is inappropriate.

All three contentions misstate the facts in the record and misapply this Court's precedents construing the Takings Clause of the Fifth and Fourteenth Amendments.

**The facts of the case at bar, as shown in the record, establish Mrs. Dolan was singled out by the city in a manner that effects a Taking**

The city, and its *amici*, argue that the city's imposition of dedications on Mrs. Dolan should not be held an unconstitutional taking by this Court because Mrs. Dolan's proposed new store will not suffer unjust and unfair burdens, but rather will impose burdens on the city and will receive various benefits from the city's imposed dedications. Thus, the dedications "imposed here . . . create[s] true 'reciprocity of advantage.' " Brief for Resp. at 41 (citing *Pennsylvania Coal v. Mahon*, 260 U.S. 393, 415 (1922)). In the city's view, the dedications are "likely [to] provide substantial value to Petitioner's property, rather than detract from it," Brief for Resp. at 41, because those dedications "reduce the hazards of flooding and enhance the general accessibility to the public of Petitioner's retail store." *Id*. However, the city overvalues the "benefits" conferred on Mrs. Dolan, underrates the burdens imposed on her by the dedications, and exaggerates the burdens her new store would impose on the city. There is no "reciprocity of advantage" that, in the absence of the city-demonstrated "essential nexus" required by *Nollan*, saves the city's decision from failing to substantially advance a legitimate state interest in violation of the Fifth and Fourteenth Amendments.



**Mrs. Dolan's proposed new store will not unduly burden the city.**

**Payment of impact fees.**

First, the city and the United States claim the payment of fees to mitigate impacts of Mrs. Dolan's development "have absolutely no bearing on the validity of the City's conditions [dedications] . . . and are used to fund programs at the discretion of those [other] governmental entitities [Washington County and the United Sewerage Agency]." Brief for Resp. at 45 n.33. *See also* Brief for United States at 20 n.14. In fact, exactly the opposite is the case. Those fees clearly do go to reduce burdens on the city.

The city, and the United States misrepresent how the $14,256.02 traffic impact fee to be assessed on Mrs. Dolan was to be used, contending it was to fund government programs of another government entity, Washington County. Brief for Resp. at 20 n.14. The record of the case at bar shows otherwise. Ordinance No. 90-65 clearly states that the city will "retain 100% of the proceeds" of assessed traffic impact fees. R., Doc. No. B, p. 161.

The record is silent as to the disposition of funds collected as the "fee in-lieu of water quality," Pet. App. G, pp. G-45, G-46. However, the record does indicate that this fee is assessed to avoid requiring on-site water treatment facilities that "could become a maintenance burden to the city." R., Doc. No. B, p. 108. Pet. App. G., p. G-14. Thus, even if this fee is to be paid to the United Sewerage Agency, as the city alleges, *See* Brief for Resp. at 45, n.33, it is clear that payment is specifically intended to avoid imposition of a burden on the city by the storm water

runoff from the proposed new store. Payment of the fee by Mrs. Dolan relieves the city of that burden.

The assertion of the United States that Mrs. Dolan failed to make arguments regarding the payment of the fees in the Oregon courts, "and she therefore failed to carry her burden," Brief for United States at 20 n.14, is without merit. Mrs. Dolan has always contended that the legal issue in this case was the constitutional propriety of the imposition of the dedication conditions on her by the city under the facts of this case, as shown in the record. The record shows the fees were imposed to mitigate traffic and stormwater runoff burdens of Mrs. Dolan's new stores.

Ultimately, the significance of the fees is that their assessment is directly based on the actual increase in square footage of Mrs. Dolan's new store over the existing facility. Pet. App. G, pp. G-15, G-45, G-46. Arguably, the underlying basis of those assessments makes those assessments directly proportional in both character and degree to the actual impacts of the increased size of the new store. Even though the city thus demonstrated the capacity to make such calculations, it found itself unable to base its dedication requirements on any analogous provisions, instead relying on mere hypotheses and conjecture.

**Impacts of a "major modification."**

Second, the city, and the United States, claim that Mrs. Dolan's new store was a "major modification" in use that would generate such grievous, adverse impacts on transportation and storm water runoff that the city could



have prohibited the development outright. Brief for Resp. at 22-23. Brief for United States at 11-12, 13 n.7. The city described the development as being akin to a "public nuisance." Brief for Resp. at 45. Both the city and the United States are mistaken.

The city's undisputed categorization of the new store as a "major modification" did not, in and of itself, establish that the categorization was a function of any adverse developmental impacts on either stormwater runoff or transportation. The city's code requires the city's planning director to designate development as a major modification whenever, *inter alia*, (1) an access driveway has been relocated, (2) a commercial building increases floor area by more than ten percent, or (3) a commercial building reduces the amount of open space on the parcel by more than ten percent. CDC § 18.120.070.B (reproduced in Brief for Resp. at App. B, p. B-40). None of those designation factors necessarily is based on any adverse impacts on either transportation or stormwater runoff. It cannot be said that it was any presumed adverse impact of Mrs. Dolan's new store that caused it to be a "major modification." To use that categorization as a basis for finding, *post hoc*, adverse impacts on the city, is mere hyperbole.

**Outright prohibition of the new store.**

Third, the city's and the United States' assertions that Mrs. Dolan's development was a "nuisance" and could have been prohibited outright are incorrect. The city claims it not only had the right to deny Mrs. Dolan's new store on the basis of transportation and storm water runoff impacts, but that Mrs. Dolan never claimed such a

denial would be a taking. It also contends, given that she never challenged the "factual correctness" of the city's findings on those impacts, "it is simply too late . . . to dispute those findings before this Court." Brief for Resp. at 34-35. *See also* Brief for United States at 11-12.

This Court held in *Nollan* that "a permit condition that serves the same legitimate police power purpose as a refusal to issue the permit should not be found a taking if the refusal to issue the permit would not constitute a taking." 483 U.S. at 836. In fact, the city never asserted that it could, or would, deny Mrs. Dolan's new store outright on the basis of either transportation or storm water runoff impacts. Instead, the city approved Mrs. Dolan's application, subject to the dedication conditions, concluding that "the proposed development, with modifications, will promote the general welfare of the City and will not be significantly detrimental nor injurious to surrounding land uses, provided development that occurs complies with applicable local state and federal laws." Pet. App. G-43. Given that approval, it is now the city which cannot assert, by *post hoc* rationalizations, that it could have denied the new store outright because its adverse impacts were a "nuisance."[1]

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[1] Assuming without agreeing that the city had the authority under state law and its zoning ordinance to prohibit the new store outright, this Court's opinion in *Lucas v. South Carolina Coastal Council*, 505 U.S. ___, 120 L. Ed. 2d 798, 112 S. Ct. 2886 (1992), suggests the city may still not have been able to prohibit the new store.

Addressing the question of whether the council's characterization of its prohibition of building on Mr. Lucas' two beachfront lots was to prevent harm, this Court noted it was "pointless to make the outcome of this case hang upon this terminology" because it was significant that the council's statute "permits owners of existing structures to remain." 120 L. Ed. 2d at 818 n.11. In the case at bar, the city's code does not require, and the city makes no assertion it does require, existing commercial structures of the same size and intensity of use to be removed because of their adverse specific or cumulative impacts upon transportation and stormwater runoff.



**The city's decision does not relieve Mrs. Dolan of the burdens associated with dedicating 10% of her land to the city.**

**Dedication of a fee interest.**

First, the city claims Mrs. Dolan was not required to dedicate a fee simple interest in 10% of her real property, but only to dedicate an easement. The city cites to its decision, reproduced at Appendix G, Petition for Certiorari, pp. G-43, G-44. Brief for Resp. at 47 n.34. A close reading of those pages of the decision's conclusions, and the city's findings and conclusions in general, fails to reveal any use of the term "easement," or any description of an "easement," in conjunction with the requirements for dedications of land for a greenway and pedestrian and bicycle pathway. The city's assertion the dedications involved only an easement, and therefore were somehow less onerous, is incorrect.[2] In fact, if only an easement was required of Mrs. Dolan to mitigate stormwater runoff

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[2] Even if the city had, in fact, only required dedication of an easement, it remains that the mandate of continuous public passage across the subject property will impose a serious unconstitutional burden on Mrs. Dolan. *See Nollan*, 483 U.S. at 832 ("a 'permanent physical occupation' has occurred . . . where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed").

and transportation impacts, then the city's use of that easement for recreational purposes becomes illegitimate, because recreational use would be justified only if fee simple had been granted. Although it is permissible to use property owned outright for uses unrelated to the basis on which it was acquired, it is not permissible to use an easement for such unrelated uses.[3]

**Construction of the pathway.**

Second, the city argues that Mrs. Dolan was only required to dedicate land for the pedestrian and bicycle pathway, and "no construction requirement is imposed." Brief for Resp. at 12-13 n.14. Mrs. Dolan has argued to this Court that she is being required to "construct the pedestrian and bicyclist pathway on the property she was required to dedicate to the city." Brief for Petitioner at 18. There is no question but that the city's decision contains express language that requires construction of the pathway. *See* Pet. App. G, p. G-28 ("The applicant will be . . . required to construct an 8 foot wide pedestrian/bicycle pathway in this area.").[4] City representations to the contrary are in error – the pathway will not be "built at

[3] *Compare* Brief for United States at 18-19 (arguing greenway and pathway easements may be used for purposes unrelated to traffic and storm water runoff problems because those dedications are analogous to traditional street and sidewalk fee simple dedications).

[4] On March 1, 1994, counsel for the city notified counsel for petitioner that the city previously had waived the requirement for construction of the pathway. That waiver was made during the city's decision on the Dolans' 1989 application for site development review, and, according to counsel for the city, is documented in the record of the governing body transmitted to the



public expense." Brief for Resp. at 42. Its contentions are without merit that such construction is not actually required because that finding is not restated in the portion at the end of the city's decision entitled "Conclusion and Recommendation," reproduced at Pet. App. G, pp. G-43 - G-47. *See* Brief for Resp. at 12 n.14.

**Relief from other city-imposed burdens.**

Third, the city contends its allowance of the property to be dedicated as an offset against open space set-aside requirements mandated for the proposed new store, together with relief from the requirement to survey the boundaries and to landscape the land to be dedicated to the public, confers benefits on Mrs. Dolan and mitigates the burden of the dedications. Brief for Resp. at 43 (citing *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 137 (1978)). In effect, the city is arguing this Court should give the city credit for not penalizing Mrs. Dolan in her remaining use of the developable balance of her land, and

Oregon Land Use Board of Appeals by the city. Petitioner's appeal of the imposition of conditions in that decision was rejected by LUBA on ripeness grounds, *See* Pet. for Cert. at 3, Brief of Resp. at 3, and the Dolans in turn applied to the city for a variance. In that variance proceeding the city reinstated the pathway construction requirement. Pet. App. G, p. G-28. The city's decision on that variance application is the sole subject of the case at bar, and the record in the variance proceeding, which has been transmitted to this Court, does not include the record of the governing body in the 1989 application. In the end, the final land use decision of the city, which is the subject matter of the case at bar, clearly and unambiguously contains a finding that Mrs. Dolan "will be required to construct an 8 foot wide pedestrian/bicycle pathway . . . ." Pet. App. G, p. G-28.

for not compelling her to improve the city's property, after the city has imposed an uncompensated taking of that property on her. This is nothing more than the city avoiding "severance damages" to the remainder of Mrs. Dolan's parcel, and relieving her from the burden of providing public benefits it never should have imposed on her. It is hardly a benefit to her that the city was willing to minimize the damages inflicted on Mrs. Dolan after unfairly and unjustly severing 10% of her property, or to relieve her from surveying and landscaping land unfairly and unjustly taken from her.

**The city's decision forcing Mrs. Dolan to dedicate 10% of her land to the city does not afford her with benefits.**

**Floodway improvements.**

The city first asserts that city "floodway improvements will disproportionately benefit those like Petitioner who own property next to the floodplain." Brief for Resp. at 42. This is erroneous for two reasons. First, Mrs. Dolan's new store will not be erected in the 100-year floodplain. *See* J.A. at 3. Thus, there are no current flooding risks to form the basis for receipt of disproportionate benefits.

Second, even if there were such risks, the city's own comprehensive planning documents make clear Mrs. Dolan's property is only one of many properties that might derive benefits from floodway improvements. Discussing the reach of Fanno Creek south of Main Street, wherein Mrs. Dolan's property is located, the city determined "[t]he flood-plain width along this reach will vary



from 150 to 700 feet. Industrial, commercial, and residential structures on both sides of the stream will experience minor flood damages." Master Drainage Plan (R., Doc. No. F) at pp. 4-5. Thus, any benefits derived from city efforts at flood control will be enjoyed, not only by Mrs. Dolan, but by a large number of other Tigard landowners with property not adjacent to the creek but up to over 200 yards from Fanno Creek. But only Mrs. Dolan, and other owners with the misfortune to own land adjacent to the creek, will be unfairly and unjustly singled out to assume the floodway protection burden of dedicating land for the benefit of all the residential, commercial and industrial property owners within the flood range of Fanno Creek.

**Pedestrian/bicycle pathway.**

The city then contends Mrs. Dolan "will obtain significant advantages from the [pedestrian/bicycle] path . . . ." Brief for Resp. at 42. The city argues the pathway will act as a magnet to attract customers who are using the pathway for recreational purposes, and facilitate customer access by relieving traffic congestion in front of the store. However, there is no benefit to be derived from attracting recreational users of a pedestrian and bicycle pathway running alongside the store. The city's argument fails in the face of its own explicit findings.

The city granted Mrs. Dolan a reduction in the number of automobile parking spaces at the new store, agreeing with her characterization of her use as being similar to a "general retail sales, bulky merchandise use." Pet. App. G, p. G-32. She had characterized her use as

attracting "customers who decide in advance of travel that a product is needed and who travel to a specific destination to obtain that product." *Id.*

Finally, any benefits which Mrs. Dolan will derive from relief of traffic congestion by establishment of the pathway are exactly identical to the general benefits enjoyed by all of her neighboring business owners, both within and without the range of vision of the pathway, who are not required to dedicate any land to the city. Mrs. Dolan will receive no special benefits from establishment of the pathway. *See Norwood v. Baker*, 172 U.S. 269, 279 (1898) (government assessments on landowners are fair and just only if based on special benefits conferred on landowners).

**This Court's decision in *Nollan* places the burden of showing the "essential nexus" on the city.**

The constitutionality of the city's dedications at question in the instant case turns on the relationship between the government's justification for the dedications and the burdens that would be imposed on the public by Mrs. Dolan's proposed new store. This Court, in *Nollan*, recognized that the burden was on the government " 'to demonstrate a specific connection between provisions . . . [requiring dedications] and burdens on . . . [the public interests involved] . . . .' " 483 U.S. at 841 (quoting Brennan, J., dissenting). Thus, once Mrs. Dolan asserted that the city's dedications were a taking, it was the Fifth Amendment that imposed the burden of making that demonstration on the city. Nonetheless, the city argues that *Nollan* does not require that "the government must



prove the precise extent of those burdens and that it has precisely calibrated its response to those burdens." Brief for Resp. at 23.

Under the city's reading of *Nollan*, there is a presumption that a landowner has an obligation to dedicate property to the city unless the owner proves to the city's satisfaction that a variance should be granted. Requiring landowner proof of the negatives, that a proposed development would not adversely affect the environment and would cause no undue future liabilities for the city, is an impossible task. The city cannot defeat a takings claim by requiring a landowner to carry an unspecified burden of proof to establish undefined factors to the totally discretionary satisfaction of the very governmental agency which wants to take the land away from the owner without paying for it. The United States asserts that "consistent with the rule in constitutional litigation generally, the burden is on the person challenging the governmental action to establish a violation of the Takings Clause." Brief for United States at 9 (citing *Lucas*, 112 S. Ct. at 2893 n.6). Mrs. Dolan does not dispute that she has the burden of showing that the decision of the city violated the Takings Clause. It is undisputed that the city is demanding the dedication of 7000 square feet of her land, and has refused to compensate her for it. She has shown that and thus has met her burden of proof.

As *amicus* for the city 1000 Friends of Oregon, *et al.*, stated: "[A] land-use agency that fails to meet its initial burden of coming forward with evidence will no longer enjoy the ordinarily favorable assumptions about the factual basis for its decision." Brief for 1000 Friends at 27 (citations omitted). The city did not come forward with

evidence, notwithstanding its assertions that its comprehensive plan and its supporting documents established the necessary evidentiary support. *See* Brief for Resp. at 6-12. Those documents, however, merely attempt to validate the legitimacy of the city's state interest, and never relate any increase in square footage of development, increase in impervious surface, or vehicle trips per day, to requirements to dedicate measurable amounts of land, or interests therein. *See* R., Doc. No. F, pp. 8-10, 8-11. R., Doc. No. C, pp. 2-3. Those documents do not demonstrate the existence of the essential nexus required by *Nollan*. No attempt was made to establish that the unquantified effects asserted by the city to result from the enlarged building would justify denial of the permit in absence of the required dedication. "Simple common sense" that enlargement "will" lead to such effects, *See* Brief for United States at 19, is manifestly inadequate.

It was exactly that failure that Mrs. Dolan challenged at every level of review of the city's decision from the city's planning commission to this Court. Petitioner's Reply to Brief in Opp. at 3. And, as the dissent in the Oregon Supreme Court observed, "[t]he findings here [of the city] do not establish any cognizable remediable purpose attributable to the change in use." Pet. App. A, p. A-30 (Peterson, J., dissenting).

The City of Tigard, addressing Mrs. Dolan's proposed new store, utterly failed to demonstrate a specific connection between its dedications and the burdens of Mrs. Dolan's new store on the public interests involved. Its argument it should not have been required to shoulder the burden of making that demonstration is contrary to *Nollan* and should be rejected.



**Heightened scrutiny of the nexus between development impacts and dedication conditions imposed by the city is appropriate because its decision is being challenged on an as-applied basis, and thus is not entitled to the same deference accorded legislative and administrative decisions.**

There is no presumption of constitutionality that attaches to the city's decision to impose uncompensated dedications on Mrs. Dolan as conditions of approval for her new store. Mrs. Dolan has never facially challenged the constitutionality of the provisions of the city's comprehensive plan provisions and zoning ordinance that required her to dedicate 7000 square feet of her land to the city. She has, however, always contended those dedications, as applied, in the absence of the city's demonstration of the essential nexus required by *Nollan*, must be accompanied reciprocally by just compensation. Notwithstanding city assertions she never challenged the factual basis of the city's findings, Brief for Resp. at 26, she has, at every level of appeal, challenged the legal sufficiency of those findings under *Nollan*. And no compensation has been tendered.

The city argues: "The presumption of validity of legislative enactments is deeply rooted in this Court's jurisprudence." Brief for Resp. at 24 n.18 (citing *Brown v. Maryland*, 25 U.S (12 Wheat.) 419, 436 (1827)). However, the city never establishes that this Court has ever held that a city's decision not to pay for private property that it takes for public benefit is entitled to a presumption of validity in an as-applied constitutional challenge. The same deference that traditionally has been granted to facial challenges of both regulatory and legislative action

is not appropriate where the city itself, applying its legislation, is attempting to extract property interests for its own benefit. *See United States v. Good*, 62 U.S.L.W. 4013, 4017 (U.S. Dec. 13, 1993) (it is important to subject government actions to heightened scrutiny when government has direct financial interest in outcome of its decision).[5]

Indeed, deference should not be accorded where the city's justification for its dedications was merely a subterfuge. In the case at bar, the city made no findings in support of its contention that the dedications imposed on Mrs. Dolan were "carefully tailored to Petitioner's circumstances in many significant respects." Brief for Resp. at 45 (footnote omitted). The findings of the city found the dedications *reasonably related* to the new store, found it *reasonable to assume* and *reasonable to expect* the new store would have anticipated transportation impacts, and concluded the dedications *could* offset some of those impacts. Pet. App. G, p. G-24.

Instead, the city's code required dedication of land for a greenway and pedestrian pathway without regard to any impacts, adverse or otherwise. The city's comprehensive plan merely established the need for stormwater runoff protection and mitigation of transportation

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[5] Deference is even less appropriate where the constitutional challenge not only arises in an as-applied takings claim, but also where the decision upon which that claim is based is a quasi-judicial land use decision. The Oregon Supreme Court has held that a land use decision affecting a limited geographical area, such as the decision in the case at bar on an application for site development review and a variance on a single parcel, is a quasi-judicial rather than a legislative act. *Fasano v. Washington Co. Comm.*, 264 Or. 574, 581, 507 P.2d 23 (1973).



impacts. It never related those needs directly to measurable increases in the size or use of commercial structures.

The "reasonable" "expectations" and "anticipations" in the city's findings were nothing more "than an exercise in cleverness and imagination." *Nollan*, 483 U.S. at 841. If the city's decision is accorded the deference given to the facial review of legislation, the city's findings of even minimal effects become sufficient to justify the most substantial of exactions. A finding of even one additional vehicle trip per day from the new store could be used by the city to require Mrs. Dolan to repave all of the streets in the city because "it can be assumed her expansion will cause an increase in traffic, contributing to the need to resurface the streets." Brief for *Amicus Curiae* Northwest Legal Foundation at 12.

The United States argues "the Court has afforded governmental bodies considerable latitude to impose conditions reasonably related to the underlying program." Brief for United States at 21 (citations omitted). This would be true if the case at bar were merely an economic regulation case. But the city did not limit its actions to regulation alone (such as restricting development within the 100-year floodplain, or requiring setbacks from the boundary of that floodplain). It was the city's choice to go beyond the role of traditional regulation and demand dedication of Mrs. Dolan's land. That moved this case outside the precedents cited by the city and the United States related to economic regulation into the precedents based on the taking of property by government. Once the city decided to mix property acquisition into its regulatory actions, the more restrictive legal protections granted the owner of property which is subject to acquisition

must be met in addition to the less restrictive protections granted to the owner of property that is subject merely to regulation. The city must show a reasonably proportionate relationship, in both character and degree, and be subjected to heightened scrutiny, rather than being accorded the deference due facial review of economic regulation under the police power.

## CONCLUSION

The city's argument in its Brief for Respondent, together with the brief for *amicus* United States, demonstrate that the standard employed by the city and urged on this Court, and the scrutiny (or lack thereof) employed by the Oregon courts, do nothing to protect individual landowners from being singled out to bear unfair burdens of providing property for proposed government projects.

The city contends if it adopts a plan to address a community-wide problem (*e.g.* traffic increases) and specifically identifies property needed to implement portions of that plan, the city may then demand all the property required (no matter how much of an individual parcel that may be) if any approval is requested by the property owner that would cause any contribution (no matter how small) to the identified problem. It makes no difference if the city takes a little for some other purpose (*e.g.* recreation). It makes no difference that the property owner also is paying a fee intended to fully mitigate its contribution to the problem. It makes no difference if other property owners making a similar contribution to the problem



are not required to dedicate the property (because the plan has not identified their property as needed).

In sum, the city's argument boils down to a claim that, as a condition of land use approval, it may exact any amount of property from an applicant and may use that property for any public purpose as long as the applicant's project will make some minimal contribution to some community problem and the property will be used in some minimal way to address that problem.

The United States at least recognizes the correct standard: "[I]f a permit condition is wholly out of proportion or fair relation to the proposed development and the circumstances of the property on which the condition is imposed, a question again would arise as to whether the measure actually has the purpose it ostensibly serves." Brief for United States at 26. On the facts of the case at bar, the city made no attempt to achieve any degree of proportionality because the city did not think it was necessary.

Petitioner, Florence Dolan, respectfully urges this Court to reject the city's *post hoc* rationalizations of its land use decision, and to hold the city violated the Fifth and Fourteenth Amendments by failing to demonstrate that the dedications it required of her were reasonably proportional, in both character and degree, to the specific

burdens her new store would impose on traffic and stormwater runoff.

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